

**BEFORE THE ARKANSAS DEPARTMENT OF LABOR**

***In The Matter of Robert Bowry vs. Sherwood Bible Church***

**ORDER**

**I. Introduction**

Pursuant to the authority of the Director of the Arkansas Department of Labor granted by Arkansas Code Annotated §11-4-301 et seq., a telephone hearing was held on June 15, 2006 at 10:00 a.m. in the offices of the Arkansas Department of Labor. The purpose of the hearing was to receive evidence and hear testimony in consideration of the appeal filed by Robert Bowry from a Preliminary Wage Determination Order finding Sherwood Bible Church was indebted to Robert Bowry in the amount of \$258.34. Appearing at the hearing by telephone were Robert Bowry, Renee Ehlers, Ron Moseley, Cindy Frase and Gina Worsham. From the evidence and testimony presented, the following final administrative order is made.

**II. Findings of Fact**

Robert Bowry, the claimant, filed a wage claim, against Sherwood Bible Church, stating that he was not paid for his last week of work, which was the payroll period beginning January 30, 2006 through the ending date of February 3, 2006. Mr. Bowry claimed a gross total due of \$625.00, less taxes. A preliminary wage determination order was issued on April 11, 2006, ordering Sherwood Bible Church to pay Robert Bowry a total of \$258.34. Sherwood Bible Church mailed a check, dated April 20, 2006, for Robert Bowry, to the Arkansas Department of Labor in the amount of \$258.34. Robert Bowry filed a timely appeal and requested the telephone hearing.

Documented evidence included a salary agreement of \$625.00 per week between Sherwood Bible Church and Robert Bowry beginning September 12, 2005. This agreement was signed by the claimant, Robert Bowry, as well as Ron Moseley, the respondent.

Documented evidence also included the Sherwood Bible Church general ledger with entries beginning August 8, 2005 through December 31, 2005. The ledger shows that Robert Bowry was paid \$625.00 each week, less taxes, for each of the 16 weeks of payroll, beginning September 19, 2005 through December 27, 2005. The general ledger also shows one other check paid to Robert Bowry in the amount of \$52.38 for mileage reimbursement on November 10, 2005. This one check was the only documented check received by Robert Bowry other than his weekly salary checks. There was no ledger provided for payroll that occurred after December 31, 2005.

Sherwood Bible Church repeatedly stated at the telephone hearing that Robert Bowry worked a total of twenty weeks and was paid for twenty weeks. During the telephone hearing, Sherwood Bible Church faxed a copy of six monthly calendars starting with September of 2005 through February of 2006. Sherwood Bible Church had marked on these monthly calendar sheets the day of the salary agreement and marked each actual payday along with the check number and net amount paid to Robert Bowry each week. Gina Worsham with Sherwood Bible Church stated for the record the date of each and every paycheck paid to Robert Bowry. The faxed calendar sheets and testimony by Gina Worsham show that Robert Bowry was paid \$625.00 a week for twenty weeks, ending with the last check, number 17236, paid on January 30, 2006, for the payroll period of January 23, 2006 through January 27, 2006. There was no evidence or testimony presented to indicate that Robert Bowry was paid for the payroll period in question, which was his last week of work, January 30, 2006 through February 3, 2006. This last week was the twenty-first (21<sup>st</sup>) week of work for Robert Bowry.

### III. Conclusions of Law

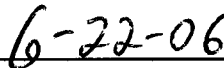
Robert Bowry worked a total of twenty-one (21) weeks for Sherwood Bible Church under a salary agreement of \$625.00 per week. The evidence shows that Robert Bowry was paid correctly for only twenty (20) weeks. There is no evidence to prove that Robert Bowry was paid for his last week of work in question. Sherwood Bible Church provided no evidence of a legitimate set-off in wages.

Sherwood Bible Church has tendered a check, number 17765, to the Arkansas Department of Labor in the amount of \$258.34. This check will be returned to Sherwood Bible Church and Sherwood Bible Church is hereby **ORDERED** to remit the amount due, \$625.00, to the Arkansas Department of Labor.



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HEARING OFFICER



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DATE

**BEFORE THE ARKANSAS DEPARTMENT OF LABOR**

**In The Matter of  
Jayme Gamblin vs. Southwest  
Trade Company**

**Order**

On May 31, 2006, a telephone hearing was held in the offices of the Arkansas Department of Labor to consider the appeal filed by David Collins of Southwest Trade Company from a Preliminary Wage Determination Order finding Southwest Trade Company was indebted to Jayme Gamblin in the amount of \$610 for back wages.

Present was Jayme Gamblin and David Collins of Southwest Trade Company. From the evidence in the record and from the testimony, the following ORDER is entered.

**FINDINGS OF FACT:**

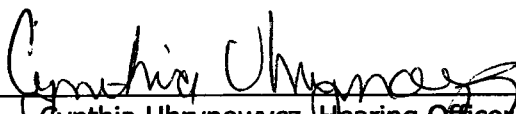
Jayme Gamblin was employed by Southwest Trade Company from August of 2005 until September 3, 2005. Both parties testified that her rate of pay was agreed to be \$6.00. Both parties also testified that from July 27, 2005, until September 3, 2005, Ms. Gamblin worked 135 hours. Mr. Collins testified that he did owe Ms. Gamblin wages, but didn't believe he owed her \$610 in wages. He also testified that he did not keep time records or payroll records. He stated Ms. Gamblin took care of all of that, and he had trusted her. Ms. Gamblin stated she had received \$200 in cash, but had not received the rest of her wages. Mr. Collins testified he did not keep receipts for cash payments.

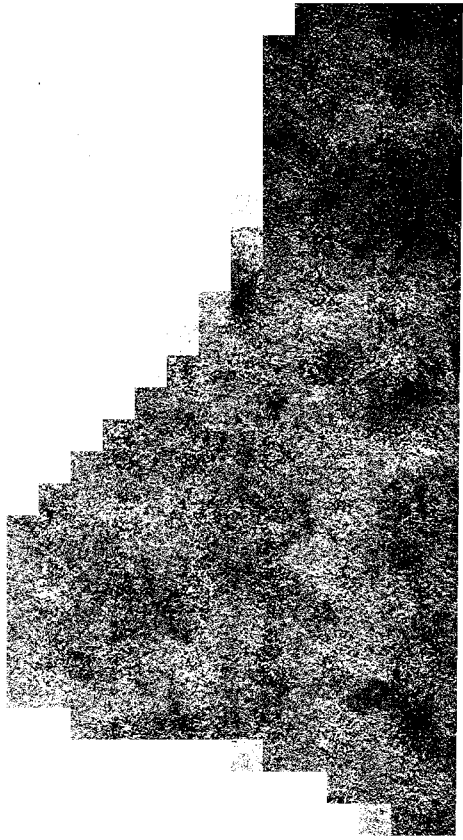
**CONCLUSIONS OF LAW:**

In wage cases, the claimant has the burden of showing by a preponderance of the evidence that he or she is entitled to wages. Ms. Gamblin has met her burden. Mr. Collins has admitted that he kept no payroll records and that Ms. Gamblin worked the hours she claimed at the rate of pay she has claimed. Mr. Collins also admits that he owes Ms. Gamblin money, but

is unsure of how much. Ms. Gamblin's testimony on how much is owed is much more definitive and credible. Even in her wage claim, she has credited Mr. Collins with one cash payment of \$200. As Mr. Collins has never kept proper records and has an unclear memory, he cannot rebut Ms. Gamblin's testimony.

THEREFORE it is hereby ORDERED that Southern Trade Company is indebted to Jayme Gamblin in the amount of \$610.

  
Cynthia Uhryn timer, Hearing Officer



**BEFORE THE ARKANSAS DEPARTMENT OF LABOR**

***In The Matter of Walter Gunn vs. Pier 65 Marine***

**ORDER**

**I. Introduction**

Pursuant to the authority of the Director of the Arkansas Department of Labor granted by Arkansas Code Annotated §11-4-301 et seq., a hearing was held on May 18, 2006 at 2:00 p.m. in the offices of the Arkansas Department of Labor. The purpose of the hearing was to receive evidence and hear testimony in consideration of the appeal filed by Walter Gunn from a Preliminary Wage Determination Order finding Pier 65 Marine was not indebted to Walter Gunn. Appearing at the hearing were the claimant, Walter Gunn, and Johnny Konkler, owner of Pier 65 Marine. From the evidence and testimony presented, the following final administrative order is made.

**II. Findings of Fact**

Walter Gunn, the claimant, filed a wage claim against Pier 65 Marine, stating that he was not paid for 46 and 1/2 hours of work at \$15.00 per hour, totaling \$697.50, for the payroll period beginning February 20, 2006 through the ending date of March 2, 2006. A preliminary wage determination order was issued April 12, 2006 finding Walter Gunn was not entitled to any wages claimed. Walter Gunn filed a timely appeal and requested the hearing.

Mr. Gunn was employed as a mechanic for Pier 65 Marine. Mr. Gunn was paid \$216.25 for work performed as a mechanic for the pay period in question. After Mr. Gunn quit his job, Pier 65 Marine found an error in payment to Mr. Gunn and paid him an additional \$142.50. This payment was for mechanic work performed.

Mr. Gunn's wage claim was for work performed outside of his duties as a mechanic. During the payroll period in question, Pier 65 Marine was moving their place of business. Mr. Gunn testified that the service manager, Mr. Eric Morrison, told him to keep up with his hours worked in helping with this move. Mr. Gunn kept a daily time card which documented a total of 46 and 1/2 hours of work he performed in helping with the move during the two-week payroll period.

Mr. Konkler testified that he told Mr. Morrison before the move that he could not pay Mr. Gunn for any time that he helped the business move and that Mr. Gunn should stay home during the move. Mr. Konkler also testified that he told Mr. Gunn that he could not pay him for helping with the move. Mr. Gunn denied that he was told this by Mr. Morrison or Mr. Konkler.

Mr. Konkler testified that Mr. Gunn did help with the move, but that he thought Mr. Gunn was doing this on his own, since he had told both Mr. Morrison and Mr. Gunn that Mr. Gunn would not be paid for this work. Mr. Konkler testified that Mr. Gunn was not required to help. Mr. Konkler testified that his instruction was for Mr. Gunn not to help and that he would not be paid. Mr. Konkler testified that he had no idea of the number of hours Mr. Gunn worked in helping with the move.

### **III. Conclusions of Law**

In wage claim matters, the claimant has the burden of proof. Mr. Gunn has met that burden of proof through his testimony at the hearing, documented evidence of the time card, witness statements taken by the investigator and testimony provided at the hearing by Mr. Konkler. Mr. Gunn, as an employee of Pier 65 Marine, performed 46 and 1/2 hours of work for the benefit of Pier 65 Marine. Mr. Konkler witnessed Mr. Gunn helping with the move of the business and allowed him to continue to work. Whether or not he was scheduled to be at work

and/or told to be at work, he must be compensated for the 46 and 1/2 hours. If Mr. Konkler did not want to be obligated to pay Mr. Gunn for helping with the move, he should have not allowed him to work. Mr. Gunn has provided the preponderance of the evidence to support his claim.

**THEREFORE** it is hereby **ORDERED** that the appeal is granted and the Preliminary Wage Determination shall be reversed. Pier 65 Marine is indebted to Walter Gunn in the amount of \$697.50.

A handwritten signature in cursive script, appearing to read "Don Cash", is written above a horizontal line.

Hearing Officer



**BEFORE THE ARKANSAS DEPARTMENT OF LABOR**

***In The Matter of  
Tamica Jennings vs.  
Burger King***

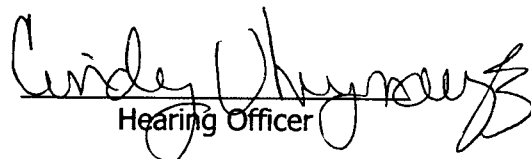
***Order***

On Thursday, May 18, 2006, a hearing was held in the offices of the Arkansas Department of Labor to consider the appeal filed by Burger King from a Preliminary Wage Determination Order finding they were indebted to Tamica Jennings for back wages. Present was Dominic Flis of Flis Enterprises, d/b/a Burger King. However, Tamica Jennings was not present. The record reflects notice was sent by certified mail and by regular mail to her last known address.

***Findings of Fact:*** The wage claimant in this case, Tamica Jennings, was not present at the hearing and the record does not reflect an attempt to contact the Arkansas Department of Labor with a sufficient reason for her absence.

***Conclusions of Law:*** As the claimant has the burden of proof in wage claim cases and that burden cannot be met without an appearance, the wage claim must be dismissed.

***THEREFORE*** it is hereby ***ORDERED*** that the present wage claim be DISMISSED.

  
Hearing Officer

**BEFORE THE ARKANSAS DEPARTMENT OF LABOR**

***In The Matter of Joyce Smith vs. Tobacco Town, Inc.***

**ORDER**

**I. Introduction**

Pursuant to the authority of the Director of the Arkansas Department of Labor granted by Arkansas Code Annotated §11-4-301 et seq., a hearing was held on May 17, 2006 at 10:00 a.m. in the offices of the Arkansas Department of Labor. The purpose of the hearing was to receive evidence and hear testimony in consideration of the appeal filed by Becca Wetzel from a Preliminary Wage Determination Order finding Tobacco Town, Inc. was indebted to Joyce Smith in the amount of \$81.72. Appearing at the hearing were Joyce Smith, Jeremy McCoy, Reannah Duckett, Becca Wetzel and Will Wetzel. From the evidence and testimony presented, the following final administrative order is made.

**II. Findings of Fact**

Joyce Smith, the claimant, filed a wage claim against Tobacco Town, Inc., stating that she was shorted hours and therefore, underpaid for the payroll period beginning December 18, 2005 through the ending date of December 31, 2005. A preliminary wage determination order was issued ordering Tobacco Town, Inc. to pay Joyce Smith a total of \$81.72. Becca Wetzel of Tobacco Town, Inc. filed a timely appeal and requested the hearing.

At the hearing, both parties agreed that the claimant worked a total of thirty five and one half (35 and ½) hours for the first week of the two-week payroll period.

Ms. Smith claimed that she is owed for sixty one and one half (61 and ½) hours for the second week of the two-week payroll period. Ms. Wetzel disputed this number of hours.

Both parties did agree on a total of twenty four and three quarters (24 and  $\frac{3}{4}$ ) hours that Ms. Smith worked on December 26<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup>.

Ms. Smith claims she worked from 8:00 a.m. until 8:15 p.m. on December 27<sup>th</sup>, 30<sup>th</sup> and 31<sup>st</sup>. Ms. Wetzel stated that Ms. Smith worked from 12:00 p.m. until 8:15 p.m. on December 27<sup>th</sup> and 30<sup>th</sup>. Also, Ms. Wetzel stated that Ms. Smith worked from 8:00 a.m. until 5:15 p.m. on December 31<sup>st</sup>. Ms. Wetzel testified that Ms. Smith could not have worked until 8:15 p.m. on December 31<sup>st</sup> because the store closes at 5:00 p.m. on Saturdays. It was noted that Ms. Smith was paid by Ms. Wetzel for a total of eleven and one quarter (11 and  $\frac{1}{4}$ ) hours that began at 8:00 a.m. and ended at 7:15 p.m. for Saturday, December 31<sup>st</sup>, 2005.

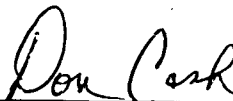
A total of eleven (11) hours of unpaid work claimed by Ms. Smith is disputed by Tobacco Town, Inc.

### **III. Conclusions of Law**

In wage claim matters, the claimant has the burden of proof. Ms. Smith has met that burden of proof through her testimony at the hearing, documented evidence consisting of a personal record she kept of her hours worked, witness statements taken by the investigator and witness testimony provided at the hearing. Ms. Smith has provided the preponderance of the evidence to support her claim.

Tobacco Town, Inc., which appealed the preliminary wage determination order and requested the hearing, did not provide any evidence to dispute the claim whatsoever.

**THEREFORE** it is hereby **ORDERED** that Tobacco Town, Inc. is indebted to Joyce Smith in the amount of \$92.11. This amount represents 75.5 of straight time hours at \$5.25 per hour and 21.5 hours of overtime at \$7.875 per hour, less the amount paid of \$473.58.



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Hearing Officer

**BEFORE THE ARKANSAS DEPARTMENT OF LABOR**

***In The Matter of Ricky Stracener vs. CHP Trucking***

**ORDER**

**I. Introduction**

Pursuant to the authority of the Director of the Arkansas Department of Labor granted by Arkansas Code Annotated §11-4-301 et seq., a hearing was held on April 4, 2006 at 2:00 p.m. in the offices of the Arkansas Department of Labor. The purpose of the hearing was to receive evidence and hear testimony in consideration of the appeal, filed by Matthew W. Adlong, of Brazil, Adlong & Winningham, on behalf of CHP Trucking, from a Preliminary Wage Determination Order finding CHP Trucking was indebted to Ricky Stracener in the amount of \$899.54. Appearing at the hearing were the following: the claimant, Ricky Stracener; Charles Henson and Patricia Henson, owners of CHP Trucking; and Matthew Adlong, legal counsel for CHP Trucking. From the evidence and testimony presented, the following final administrative order is made.

**II. Findings of Fact**

Mr. Stracener filed a wage claim against CHP Trucking for unpaid wages of \$899.54 for the payroll period beginning December 2, 2005 through the ending date of December 14, 2005. The employer denied the wages claimed, requesting a set-off in wages, and by legal counsel, requested an administrative hearing on the matter. A certified letter informing all parties of the hearing date was sent by certified mail on March 7, 2006.

Mr. Stracener signed a contract with CHP Trucking on November 4, 2005, as an independent contractor. The contract stipulated that Mr. Stracener was to receive 25% gross revenue less fuel surcharge. The contract also stipulated that Mr. Stracener was liable for the

first \$1,000.00 of damage and that CHP Trucking would withhold from payment 1 ½% weekly until the \$1,000.00 was maintained in his escrow account.

Remuneration statements indicate that Mr. Stracener was paid, according to the terms of his contract, for a total of eighteen truck loads, which are documented by separate invoices. Mr. Stracener had accrued a total of \$298.49 in his escrow account. Mr. Stracener's final remuneration statement included eight invoices, #4170, 4172, 4173, 4175, 4177, 4179, 4180 and 4181.

Mr. Stracener's claim is in reference to the final invoice, #4181, which required him to drive to Big Springs, Texas to pick up a load of cottonseed and deliver the load to Mesquite, New Mexico. Mr. Stracener did pick up the load in Big Springs, Texas, but had transmission problems around the vicinity of El Paso, Texas. Mr. Stracener called Mr. Henson and was instructed to leave the load in a secure area and return the truck to Conway, Arkansas, where Mr. Henson could have a mechanic work on the truck. Mr. Stracener returned the truck with the bad transmission to Conway, Arkansas, where he then picked up another truck and headed back to El Paso to pick up the load and deliver it to Mesquite, New Mexico. According to Mr. Stracener, during his trip back to El Paso, he stopped to rest and claims he found two bottles of urine in the back of the cab area of the truck. According to Mr. Stracener, he called and told Mr. Henson that he could not drive this truck for too long and that Mr. Henson needed to get the other truck fixed. According to Mr. Henson, Mr. Stracener called him after already driving 200 to 300 miles and said the truck was too dirty to drive. Both parties agreed that Mr. Henson told Mr. Stracener to bring the truck back to Conway and that Mr. Henson said that he would have to find someone else to drive the truck. Mr. Stracener then returned the truck to Conway, Arkansas, failing to pick up the load that had been left in El Paso and therefore failing to complete the delivery to Mesquite, New Mexico.

The claimant, Mr. Stracener, testified that he was owed \$899.54, which consisted of the following: \$350.00 for mileage driving from El Paso to Conway; \$3.79 for a light bulb that he purchased for the truck; \$50.00 for fuel he had purchased for the truck, but reimbursement had been denied; \$200.00 for the accrued amount in his escrow account; \$85.75 for incidental purchases he had made and had previously received reimbursement, but his final check had a deduction for this amount; and \$210.00 for mileage driven on his final trip from Conway to Texas and the return trip from Texas to Conway.

Testimony taken at the hearing from Mr. Stracener and Mr. Henson, verified that Mr. Stracener's contract provided that he was to be paid by the truck load, not by the number of miles driven. Also, documented evidence was presented consisting of payroll remuneration statements and invoice sheets, shows that Mr. Stracener was paid for the last truck load in question, invoice #4181, even though he failed to deliver the load. The total invoice amount for invoice #4181 was \$756.72. Mr. Stracener, per his contract agreement, received 25% of this total after deducting 10% for fuel surcharge. Ten percent of \$756.72 equals \$75.67, which deducted from \$756.72, leaves a balance of \$681.05. Twenty-five percent of \$681.05 equals \$170.26. CHP Trucking did deduct \$50.00 from that payment, for failure to complete delivery of the load, which leaves a balance of \$120.26 for invoice #4181 that was paid to Mr. Stracener although he did not complete the terms of the agreement.

Mr. Stracener testified that he bought \$50.00 worth of fuel for the truck and was denied reimbursement. Mr. Stracener testified that the fuel ticket for this purchase had the information required for reimbursement. Both Mr. and Mrs. Henson both testified that the fuel ticket did not have the required information for reimbursement, which included the date of the purchase, the company name and the initials of the gas station attendant. Both Mr. and Mrs. Henson testified that they felt the fuel ticket was falsified.

Mr. Stracener testified that his escrow account should not be applied to the replacement of the transmission because he felt the escrow account was not meant for mechanical repair. Mr. Stracener had claimed that his escrow account of \$200.00 was not reimbursed on his final settlement, but Mr. Henson testified and the documented evidence shows that Mr. Stracener actually had \$298.49 in his escrow account that had not been reimbursed. Mr. Henson testified that the escrow account was used to cover any "driver caused" damage to the truck up to \$1,000.00. Mr. Henson also testified that Mr. Stracener tore the transmission up and that his mechanic told him that it was more than likely, the fault of the driver. Mr. Henson also stated that he did not know this until after Mr. Stracener had quit and received his final settlement.

Testimony provided at the hearing from Mr. Stracener and Mr. Henson, along with documentation provided for the hearing, shows that Mr. Stracener had been reimbursed on previous paychecks for incidental items that he had purchased totaling \$85.75 and that this same amount was deducted from his final paycheck. Also, a receipt for the \$3.79 light bulb was provided.

### **III. Conclusions of Law**

In wage claim matters, the claimant has the burden of proof. That burden may not be met by the claimant's testimony alone, unless such testimony was uncontroverted. Furthermore, the employer has the burden to prove entitlement to a set-off against wages. In this case, Mr. Stracener has the burden of proving his claims and CHP Trucking has the burden of proving by a preponderance of the evidence that the amounts claimed as a set-off are valid.

Mr. Stracener's claim of \$350.00 for driving from El Paso to Conway, along with his claim of a total of \$210.00 for driving from Conway to Texas and back to Conway, are unfounded. Both parties testified that the agreement, which was also documented in writing, was for Mr. Stracener to be paid by percentage of the gross revenue of the load, not by the mile. Both

parties also testified that there were no separate or additional terms of payment that had been agreed upon for Mr. Stracener to receive additional payment for these miles driven. The claimant has the burden of proof and there was no evidence to support this part of his claim. Furthermore, CHP Trucking did pay Mr. Stracener for the invoice #4181, which was for the final trip in question, even though Mr. Stracener did not complete the delivery of the load as required by the terms of his contract agreement. Therefore, CHP Trucking actually overpaid Mr. Stracener by paying for invoice #4181 and is due a credit totaling \$120.26.

CHP Trucking requested \$132.75 as a set-off in wages for the cost of Mr. Stracener deadheading/bobtailing the truck 250 miles on the return trip to El Paso to pick up the trailer and then returning back to Conway without having completed the delivery of the load. Mr. Henson testified that he told Mr. Stracener to bring the first truck back to Conway and he also testified that he told Mr. Stracener to bring the second truck back to Conway. The request for a set-off in wages for \$132.75 is denied.

Copies of the receipt for the \$3.79 light bulb that Mr. Stracener bought for the truck were included in the file and Mr. Henson did agree on record to pay for this item if a receipt was presented.

In regards to Mr. Stracener's claim of \$50.00 for the fuel ticket that had not been reimbursed, Mr. Stracener testified that the fuel ticket had all the information required for reimbursement. Again, in wage claim matters, the claimant has the burden of proof and that burden may not be met by the claimant's testimony alone, unless such testimony was uncontroverted. That was not the case in this matter. Mr. Henson and Mrs. Henson both testified that the ticket did not have the company name, the date of purchase and also did not have the initials of the station attendant as required. CHP Trucking did not claim this \$50.00



as a set-off in wages. Mr. Stracener did not meet the burden of proof for this \$50.00 portion of his claim.

Additionally, Mr. Stracener claimed \$200.00 for reimbursement of his escrow account. The actual amount he had accrued was \$298.49. Mr. Stracener testified that he understood the escrow account to be used in instances such as damaging a bumper or tearing off a mirror, not for mechanical repair. Mr. Henson's employer response to the notice of wage claim stated that Mr. Stracener was to pay the first \$1,000.00 of repair if he did any damage to the truck. Mr. Henson's testimony at the hearing included that the intention of the escrow account was for driver caused damage. The final settlement statement provided to Mr. Stracener by CHP Trucking also had a hand written note stating that the escrow account will be settled when all expenses are reviewed and considered due to driver negligence. At the hearing, on the record, Mr. Henson agreed with the hearing officer that the escrow account contract wording was vague. Mr. Henson's only evidence of driver caused damage or negligence was his statement that Mr. Stracener tore the transmission out and that his mechanic said it was, more than likely, driver failure. The employer has the burden of providing a preponderance of the evidence for a legitimate set-off in wages. The employer did not prove that Mr. Stracener was negligent and/or caused the damage to the transmission. Mr. Stracener is due a reimbursement of the accrued amount of his escrow account totaling \$298.49 and the employer's request for a set-off of \$1,000.00 is denied.

CHP Trucking had previously accepted and reimbursed Mr. Stracener for a total of \$85.75 in receipts for incidental items such as cleaning supplies and paint for the company owned truck. The \$85.75 was deducted from Mr. Stracener's final settlement. Mr. Stracener provided copies of each receipt, and even had a hand written note from CHP Trucking stating that these items are being charged back to you due to short length of contract. CHP Trucking

provided no evidence of any contract with this type of agreement and Mr. Henson even testified that a contract to this effect did not exist. Mr. Stracener has met the burden of proof for this section of his claim.

**THEREFORE** it is hereby **ORDERED** that CHP Trucking is indebted to Ricky Stracener for a total amount of \$267.77. This amount represents \$298.49 for the accrued total in the escrow account; \$85.75 for receipts that had previously been paid and were then deducted from the final check; and \$3.79 for the purchase of a light bulb. The overpayment of \$120.26 has been deducted.



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Hearing Officer

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Marshall K. Wood vs.  
Tri County Distributors, Inc.

DEFAULT ORDER

On April 20, 2006, a hearing was held in the offices of the Arkansas Department of Labor to consider the appeal filed by Tri County Distributors, Inc. from a Preliminary Wage Determination Order finding that Tri County Distributors was indebted to Marshall K. Woods in the amount of \$165.28 for unpaid wages.

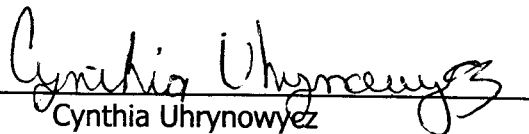
**Findings of Fact**

Notice was sent to both parties by certified mail and Mr. Howard Bolser of Tri County Distributors signed for the notice of hearing on April 12, 2006. The claimant, Marshall K. Woods, was present and ready for the hearing, however, no representative of Tri County Distributors was present.

**Conclusions of Law**

The appeal was requested by Tri County Distributors. Therefore, due to the failure to appear of Tri County Distributors, the appeal should be dismissed and the Preliminary Wage Determination Order should be upheld.

THEREFORE it is hereby ORDERED that Tri County Distributors is indebted to Marshall K. Woods in the amount of \$165.28.

  
Cynthia Uhrynovez

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Kenneth Rhodes vs.  
Inter City Transportation

Order

On Tuesday April 4, 2006, a hearing was held in the offices of the Arkansas Department of Labor concerning an appeal filed by Inter City Transportation from a Preliminary Wage Determination Order entered finding that Inter City Transportation was indebted to Kenneth Rhodes in the amount of \$38.04. Appearing at the hearing was Kenneth Rhodes, claimant and Gerry Issioffia and Ruth North on behalf of Inter City Transportation.

**Findings of Fact**


Kenneth Rhodes was employed by Inter City Transportation as a driver until September 29, 2006. He was normally paid \$6.00 per hour. The incident that lead to his leaving employment is a limousine trip that Mr. Rhodes agreed to drive for a client of Inter City Transportation. Mr. Rhodes claimed he was not paid for the trip. Mr. Rhodes presented no other facts other than his testimony that he expected to get his regular hourly rate plus the tip for the trip in question. A review of the time records indicates that Mr. Rhodes was under paid by \$38.04. However, Mr. Issioffia and the manager, Ruth North, testified that Mr. Rhodes was paid in cash at the end of the trip. Mr. Issioffia testified that he did not get a receipt from Mr. Rhodes.

**Conclusions of Law**

In wage claim cases, the claimant has the burden of proving by a preponderance of the evidence that he or she is entitled to wages. In the present case, although Mr. Rhodes testified he was not paid, both the owner, Gerry Issioffia, and the manager, Ruth North, testified that

Mr. Rhodes was paid in cash for the trip. Therefore Mr. Rhodes has not met his burden of proof for this wage claim.

THEREFORE it is hereby ORDERED that the Preliminary Wage Determination Order be reversed, and that Inter City Transportation is not indebted to Kenneth Rhodes.

  
Hearing Officer

**BEFORE THE ARKANSAS DEPARTMENT OF LABOR**

***In The Matter of  
Daniel Wade Moore vs. Berwyn Square Apartments***

**ORDER**

**I. Introduction**

Pursuant to the authority of the Director of the Arkansas Department of Labor granted by Arkansas Code Annotated §11-4-301 et seq., a hearing was held on January 5, 2006 at 10:30 a.m. in the offices of the Arkansas Department of Labor. The purpose of the hearing was to receive evidence and hear testimony in consideration of the appeal filed by Kevin Tull, on behalf of Berwyn Square Apartments from a Preliminary Wage Determination Order finding Berwyn Square Apartments was indebted to Daniel Wade Moore in the amount of \$751.49. Appearing at the hearing were Daniel Wade Moore, his mother, Diana Hill, Kevin Tull, Miesha Cotton and Lacy Armstrong. From the evidence and testimony presented, the following final administrative order is made.

**II. Findings of Fact**

Mr. Moore filed a wage claim against Berwyn Square Apartments claiming unpaid wages of \$751.49 after taxes for 56 hours of work performed at \$15.00 an hour for the payroll period beginning August 25, 2005 through the ending date of September 7, 2005. The employer denied the wages claimed, contending that no monies were owed because the claimant did not actually perform any work and he also requested a set-off in wages totaling \$2,829.78. The employer requested an administrative hearing on the matter. A certified letter informing both parties of the hearing date was sent by certified mail on November 28, 2005.

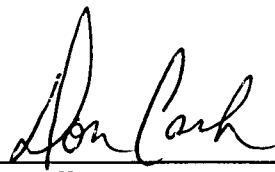
The hearing began at 10:30 a.m. The claimant, Mr. Moore, testified that he been paid a net amount of \$751.49, by direct deposit on September 9, 2005 for work performed as a maintenance worker for Berwyn Square Apartments during the pay period of August 25, 2005 through September 7, 2005. The claimant testified that the direct deposit was taken back out of his account on September 12, 2005. The claimant denied all charges of theft as alleged by the employer.

The employer, Mr. Tull, testified that he had left for vacation on or about July 14, 2005 and returned on or about September 8, 2005. Mr. Tull testified that the claimant did not work during the time period in question and that he believed the claimant had not worked during the entire time period that he was on vacation. Mr. Tull stated that the claimant had padded his time cards and that he felt that the claimant had been overpaid for the entire time period that he had been out of town. Mr. Tull stated that upon his return from vacation, he noticed that no maintenance work had been performed on the property. Mr. Tull also stated that he was approached by several tenants who said that requested maintenance work had not performed and that Mr. Moore had not been on the property since Mr. Tull had been away. Mr. Tull also claimed that Mr. Moore had stolen numerous items from the work shop and monies from the laundry facility, totaling \$2,829.78. Mr. Tull provided a list of the items that were missing from the property and a copy of the police report he had filed concerning the stolen property. Finally, Mr. Tull provided several letters from tenants concerning Mr. Moore. These letters stated that Mr. Moore was not available for maintenance requests while Mr. Tull was out of town, some stated they had seen Mr. Moore loading some of the missing items into his truck, and one letter stated that they witnessed Mr. Moore working at another job while he should have been at work at the apartment complex.

### III. Conclusions of Law

In wage claim matters, the claimant has the burden of proof. That burden may not be by the claimant's testimony alone, unless such testimony was uncontroverted. This was not the case in this matter. The only evidence provided by the claimant was a copy of the time cards for the work period in question. These time cards had been filled out by the claimant. The claimant did not present any witness testimony to substantiate his claim. The claimant repeatedly denied that he stole any of the missing items and or money, but he never denied the allegations that he padded his time cards and had been paid for hours that he actually had not performed any work and/or was even at the property. Mr. Tull presented a preponderance of the evidence to support his appeal and his testimony was more credible in this case. Again, the claimant has the burden of proof, and in this case, Mr. Moore did not prove that he worked the hours that he claimed.

THEREFORE it is hereby ORDERED that the appeal filed by Mr. Kevin Tull, on behalf of Berwyn Square Apartments, is granted and the Preliminary Wage Determination Order in favor of Mr. Daniel Wade Moore be reversed.

  
\_\_\_\_\_  
Hearing Officer



BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Yulanda Hill vs.  
Manpower

Order

On Wednesday, March 15, 2006, a hearing was held before the Arkansas Department of Labor in the matter of the wage claim filed by Yulanda Hill against Manpower for unpaid wages in the gross amount of \$68.00. The wage claimant, Yulanda Hill was present. ReNae Patterson was present and representing the employer, Manpower. Don Cash was the appointed hearing officer on behalf of the Arkansas Department of Labor.

Facts

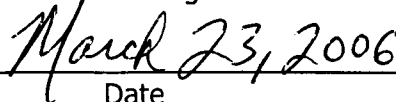
The claimant, Ms. Hill, filed a wage claim dated November 7, 2005 for \$68.00 in unpaid wages for work performed on September 1, 2005. Manpower provided evidence to the investigator that the \$68.00 had been previously paid to the claimant on November 9, 2005. Upon further investigation, it was determined that the \$68.00 check had not been cashed and was still outstanding at the bank. The field investigator found that Manpower owed the claimant \$68.00. Manpower sent a check for the gross amount of \$68.00 to the claimant, which was received by the Arkansas Department of Labor on February 10, 2006. On February 13, 2006, the Arkansas Department of Labor sent a receipt letter to the claimant advising her that the \$68.00 check had been received from Manpower and asked for her to sign the receipt letter and return to the Arkansas Department of Labor, which, upon receipt of the signed letter, would mail the claimant her check. The Arkansas Department of Labor received a letter on February 13, 2006, from the claimant, which was dated February 9, 2006. In the letter, the claimant requested a hearing and stated she was very displeased with the findings. The receipt letter was never returned.

### Findings

In wage claim matters, the claimant has the burden of proof. That burden may not be met by the claimant's testimony alone, unless such testimony was uncontroverted. This was not the case in this matter. Ms. Hill's claim of \$68.00 was substantiated and the employer has paid the claim amount. In order to receive the check, the claimant must sign and return the receipt letter to the Arkansas Department of Labor. Additionally, at the hearing, the claimant asked for penalties, consisting of \$8.50 per hour, for 8 hours a day, for 60 days, totaling \$4,080.00, to be applied per Ark. Code Ann. § 11-4-405. Application of this code requires that the employee must be discharged or refused further employment. Other than her testimony, the claimant did not provide any evidence of discharge or refusal of further employment. The claimant gave testimony, which matched her initial wage claim, indicating that she was fired by Camille Nugent, the on-site representative of Manpower, on September 1, 2005. The claimant could not provide any documented evidence to support her testimony and she did not present any witness testimony to substantiate her claim. The employer argued that Ms. Hill could not have been fired by Camille Nugent. The employer provided documented evidence that Camille Nugent had been terminated on August 30, 2005. Again, the claimant has the burden of proof, and in this case, Ms. Hill did not prove that she was discharged or refused further employment.

THEREFORE, the claimant is entitled to the gross amount of \$68.00 dollars, less normal payroll taxes, which has been received by the Arkansas Department of Labor and \$0.00 dollars in penalties.

  
\_\_\_\_\_  
Don Cash, Hearing Officer

  
\_\_\_\_\_  
Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Jeffery Means vs.  
Tenant, PI, LLC

ORDER

On Tuesday, March 7, 2006, an administrative hearing was held in the offices of Arkansas Department of Labor. The purpose of the hearing was to take testimony and other evidence pursuant to an appeal filed by Tenant, PI from a Preliminary Wage Determination Order issued in favor of Jeffery Means. Present was John Lindsey appearing on behalf of Tenant, PI, however, Jeffery Means failed to appear. The correspondence reflects that Mr. Means received notice of the hearing date, and Mr. Means has not requested a continuance.

THEREFORE, it is hereby ORDERED that the wage claim of Jeffery Means be dismissed.

Cindy U. Hymowitz  
Hearing Officer

3/10/06  
Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Melanie Thompson vs.  
Mahnoor, Inc.

Order

On Thursday, March 2, 2006, a telephone hearing was held in the offices of the Arkansas Department of Labor. The purpose of the hearing was to take testimony and other evidence regarding the appeal filed by Melanie Thompson from a Preliminary Wage Determination Order finding that her former employer, Mahnoor, Inc., was not indebted to her for back wages. Ms. Thompson appeared in her own behalf. Danna Fail appeared on behalf of Mahnoor, Inc. From the testimony presented and evidence in the record, the following Order is made.

Melanie Thompson was employed by Mahnoor, Inc., from May 23, 2005 until sometime either at the end of September or October 3, 2005, as a customer service representative. Ms. Thompson submitted a two week notice in September with her last day of work planned for October 3, 2005. However, the employer claims Ms. Thompson left on September 23, 2005. Ms. Thompson has not presented any conflicting testimony or evidence on that point.

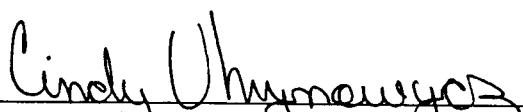
At issue is a final amount Ms. Thompson claims is owed for commissions for August and September. Both parties agree Ms. Thompson has received a final paycheck for her basic rate of pay. Mahnoor, Inc. claims that no employees were paid commission for the month of August and that Ms. Thompson is not due commissions for September because she left before she had worked her full two week notice.

It is clear that Mahnoor, Inc., never agreed to pay commissions upon termination of employment unless the employee had given two weeks notice. Ms. Thompson argues that she did give a two week notice. It is clear that the intent of the language and the company's

practices, Mahnoor, Inc., did not obligate themselves to pay commissions unless an employee actually worked or offered to work the two week notice period.

Mahnoor, Inc., claims that they did not pay any employee commissions for the month of August because of irregularities in reconciling cash receipts. However, simply refusing to pay all employees commissions earned does not mean that Mahnoor, Inc. was not obligated to pay such commissions. Essentially Mahnoor, Inc. is claiming a set off from commissions due to the discrepancy in cash receipts. Although Ms. Thompson prepared several of the August daily reports, Mahnoor, Inc., has failed to establish that she was responsible for the shortages. In refusing to pay commissions for that month, Mahnoor, Inc. deviated from a written and well established policy of requiring reconciliation of cash the same day the discrepancy arose. It is unusual there was not correspondence by Mahnoor, Inc., notifying the employees that commissions would be withheld. Ms. Fail testified that Ms. Thompson would have earned \$136 in commissions for the month of August.

THEREFORE, it is hereby ORDERED that Mahnoor, Inc., is indebted to Melanie Thompson for unpaid commissions due, in the amount of One Hundred Thirty Six Dollars (\$136.00).

  
Cindy Uhrynyszcz, Hearing Officer

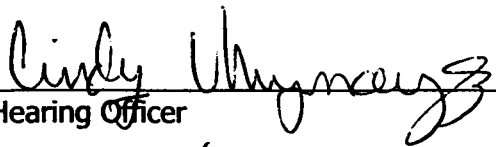
BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Harriett Neal vs.  
Valero

ORDER

On Thursday, February 23, 2006, an administrative hearing was held in the offices of Arkansas Department of Labor. The purpose of the hearing was to take testimony and other evidence pursuant to an appeal filed by Valero from a Preliminary Wage Determination Order issued in favor of Harriett Neal. Present was Kim White on behalf of Valero, however, Harriett Neal failed to appear. The correspondence reflects that Ms. Neal received notice of the hearing date, and Ms. Neal has not requested a continuance.

THEREFORE, it is hereby ORDERED that the wage claim of Harriett Neal be dismissed.

  
Hearing Officer

  
Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Sheila Wilson vs.  
Prescott Manor Nursing Home

Order

On Thursday, February 23, 2006, at 2:00 p.m., a hearing was held before the Arkansas Department of Labor in the matter of the wage claim filed by Sheila Wilson against Prescott Manor Nursing Home for unpaid wages in the amount of \$240.76. Loretta Owens was present and representing the employer, Prescott Manor Nursing Home. Don Cash was the hearing officer on behalf of the Arkansas Department of Labor.

Sheila Wilson, the claimant, had timely appealed the denial of the claim and requested this hearing. Both the employer and the claimant were notified by certified mail and regular mail, of the date, time and location of this hearing. Loretta Owens, representing the employer, Prescott Manor Nursing Home, was present at 2:00 p.m. for this hearing. The claimant, Sheila Wilson, was not present. The hearing officer requested a 15-minute delay in the start of the hearing to await the claimant. The claimant did not appear and at 2:15 p.m. the hearing was closed.

IT IS THEREFORE ORDERED that this matter is dismissed and shall not be pursued by the Arkansas Department of Labor.



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Don Cash, Hearing Officer



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Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Patty Williams vs.  
Best Western Brinkley

Order

On Monday, January 30, 2006, a hearing was held before the Arkansas Department of Labor in the matter of the wage claim filed by Patty Williams against Best Western Brinkley. The wage claimant, Patty Williams was present. No one was present and representing the employer, Best Western Brinkley. Don Cash was the hearing officer on behalf of the Arkansas Department of Labor.

Facts

Ms. Williams filed a wage claim against Best Western Brinkley claiming unpaid wages for 72 hours of work at \$6.00 per hour for a total of \$432.00 for the pay period ending September 18, 2005. Best Western Brinkley provided time sheets to the investigator showing 72 hours worked for the time period but denied the wages owed because of a set-off against the wages. Best Western Brinkley claimed Ms. Williams voided credit card charges, which caused shortages in receipts, and also alleged damage to a hotel room that had been rented to the claimant. The investigator for this case found that the claimant, Ms. Williams, was entitled to the \$432.00 for unpaid wages. The employer filed a timely appeal and requested an administrative hearing on the matter. A certified letter informing both parties of the January 30, 2006 hearing date was sent by certified mail on January 10, 2006. Anne Bragg, general manager for Best Western Brinkley, signed for the certified letter on January 12, 2006. The hearing was scheduled to begin at 10:00 a.m. on January 30, 2006. At 10:00 a.m., neither party was present. At 10:10 a.m., the claimant, Ms. Williams, appeared. The hearing officer allowed another 10 minute



delay for the employer to appear. The employer still had not shown at 10:22 a.m. when the hearing officer went on record. The record was closed at 10:24 a.m.

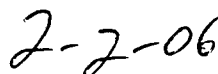
#### Findings

In wage claim matters, the claimant has the burden of proof. That burden may not be met by the claimant's testimony alone, unless such testimony was uncontroverted. In this case, the employer, who denied the claim and requested the hearing, was not present to give testimony or evidence on the company's behalf. An employer who claims a set-off of wages has the burden of proof to provide evidence as to the legitimacy of the set-off. The failure to appear at the hearing by the employer results in an Order of Default against Best Western Brinkley.

THEREFORE, the defendant is ordered to pay the wage claimant a total of \$432.00.



Don Cash, Hearing Officer



Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of  
Troy Rogers vs.  
Phoenix Utility Construction Company

Order

On Thursday, January 5, 2006, at 2:00 p.m., a hearing was scheduled before the Arkansas Department of Labor in the matter of the wage claim filed by Troy Rogers against Phoenix Utility Construction Company for unpaid wages in the amount of \$152.00. Don Cash was the hearing officer on behalf of the Arkansas Department of Labor.

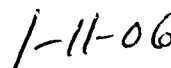
Tom Jones, on behalf of the employer, Phoenix Utility Construction Company, had timely appealed the granting of the claim and requested this hearing. Both the employer and the claimant were notified by certified mail of the date, time and location of this hearing. At 2:00 p.m., neither party was present. The hearing officer waited 45 minutes to begin the hearing. At 2:45 p.m., neither party had appeared and the hearing was closed.

IT IS THEREFORE ORDERED that this matter is dismissed and shall not be pursued by the Arkansas Department of Labor.



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Don Cash, Hearing Officer



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Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

IN RE: SOUTHWEST SUBWAY, INC. d/b/a/ SUBWAY STORE #21347,  
MAUMELLE, AR

ORDER

HISTORY:


On Wednesday, November 16, 2005, a hearing was held in the offices of the Arkansas Department of Labor as a result of Ronald Eubanks' contest of the Department of Labor's assessment of child labor penalties. Notification of hearing was mailed to Mr. Eubanks on October 5, 2005, and he appeared on behalf of the corporation.

Representing the Department of Labor were Daniel Faulkner, Attorney; Cynthia Uhrynawycz, Labor Standards Administrator; and Kathleen Dilbeck, Labor Standards Investigator. Rebecca Bryant served as Hearing Officer.

FINDINGS OF FACT AND CONCLUSION OF LAW:

Kathleen Dilbeck conducted an investigation on March 21, 2005 of Subway Store #21347 in Maumelle, Arkansas, and reported two employees, Angelette Neal and Sarah Williams, both under 16 years of age during the period of this investigation, were allowed to work a total of 66 days without obtaining an employment certificate that is required by Ark. Code Ann. § 11-9-109. Further, there were 13 occasions during this period when these same two employees worked past 7:00 p.m. on nights preceding school days or after 9:00 p.m. on nights preceding non-school days in violation of Ark. Code Ann. § 11-6-108. One deminimus violation was waived.

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The employer did not contest these findings. Pursuant to Ark. Code Ann. § 11-6-103, the Department of Labor subsequently assessed a civil penalty in the amount of \$3,900 representing \$3,300 for violations of A.C.A. § 11-6-109, and \$600 for violations of A.C.A. § 11-6-108. This same employer had received a previous warning for the same violations during the last routine inspection conducted in September 2002, but was not fined.

Mr. Eubanks testified that many of his employees were hired through the high school DECA programs, and that typically, the DECA Coordinators were responsible for securing the Minor Employment Permits. He did not specifically know why there was no permit for these two minors in question, but did know that one was home-schooled and not part of the DECA program. Her parents had requested that she be allowed to work evenings, and they had obliged. He also stated that during the time period covered in this investigation, he owned five different stores under Southwest Subway, Inc., and frequently traveled from store to store. He said that each manager had been given a copy of a poster he had downloaded from the Arkansas Department of Labor website showing hours students were allowed to work, and he knew the managers were all aware of these requirements. When Mr. Eubanks received the agency's assessment letter in September 2005, he determined it is in their best interest not to hire any students under 16 years of age, and instituted that policy at that time. Because he has incurred a notable loss in 2004, he has closed four of his five stores.

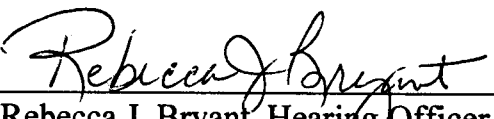
A.C.A. §11-6-103 allows the Director of the Department of Labor to determine the amount of penalty and to consider the appropriateness of such penalty to the size of the

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business and the gravity of the violation. Violations involving minors are considered serious, however, this officer finds Mr. Eubanks sincere in his attempt to permanently eliminate future violations of this nature and relies on A.C.A. § 11-6-103 in reducing the fine in this matter due to the significant reduction in the size of this business.

IT IS THEREFORE CONSIDERED AND ORDERED that Southwest Subway, Inc., d/b/a Subway Store #21347, pay to the order of the Arkansas Department of Labor the sum of \$2,340 in civil penalties for violations of the Arkansas Child Labor Laws.

James L. Salkeld  
Director of Labor

By:   
Rebecca J. Bryant, Hearing Officer  
Arkansas Department of Labor  
10421 West Markham  
Little Rock, Arkansas

DATE: 01/31/06